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FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
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In the Matter of)

Second Application by)

BellSouth Corporation, BellSouth)

Telecommunications, Inc., and)

BellSouth Long Distance, Inc., for)

Provision of In-Region, InterLATA)

Services in Louisiana)

CC Docket No. 98-121

COMMENTS OF AT&T CORP. IN OPPOSITION TO
BELLSOUTH'S SECOND SECTION 271 APPLICATION FOR LOUISIANA

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**APPENDIX TO COMMENTS OF AT&T CORP.
IN OPPOSITION TO BELL SOUTH'S SECOND
SECTION 271 APPLICATION FOR LOUISIANA**

CC Docket No. 98-121

| TAB | AFFIANT | SUBJECT(S) COVERED | RELEVANT STATUTORY PROVISIONS |
|------------|--------------------------------------|--|---|
| A | Michelle Augier | AT&T Market Entry | § 271(c)(1)(A), (c)(2)(B), (d)(3) |
| B | *William J. Baumol | Public Interest | § 271(d)(3)(C) |
| C | *Robert H. Bork | Public Interest | § 271(d)(3)(C) |
| D | Jay M. Bradbury | Operations Support Systems, Directory Listing, Number Portability, Resale | § 271(c)(2)(B)(ii), (vi), (viii), (xi), and (xiv) |
| E | Robert V. Falcone | Unbundled Network Elements: Combinations | § 271(c)(2)(B)(i), (ii), (v) and (vi) |
| F | Gregory R. Follensbee | Unbundled Network Elements: Pricing | § 271(c)(2)(B)(i), (ii) |
| G | John M. Hamman | Unbundled Switching, Intellectual Property, Reciprocal Compensation | § 271(c)(2)(B)(ii), (vi) and (xiii) |
| H | Donna Hassebrock | ADL, Interconnection, Operations Support Systems, Directory Listings, Number Portability | § 271(c)(2)(B)(i), (ii), (viii) and (xi) |
| I | R. Glenn Hubbard and William H. Lehr | Public Interest | § 271(d)(3)(C) |
| J | Patricia A. McFarland | Section 272 Compliance | § 271(d)(3)(B) |
| K | Philip I. Miller and Dean A. Gropper | Public Interest - ILEC Ability to Harm Competition | § 271(d)(3)(C) |
| L | Sharon Norris | Louisiana Public Service Commission Proceedings on Operations Support Systems | § 271(c)(2)(B)(ii) |

| TAB | AFFIANT | SUBJECT(S) COVERED | RELEVANT STATUTORY PROVISIONS |
|-----|---|--------------------------|-----------------------------------|
| M | C. Michael Pfau and Katherine M. Dailey | Performance Measurements | § 271(c)(2)(B)(i), (ii) and (xiv) |
| N | Jordan Roderick | PCS | § 271(c)(1)(A), (d)(3) |

* Affidavits marked with this are as originally filed in CC Docket No. 97-231

MISCELLANEOUS APPENDIX

| TAB | DESCRIPTION |
|-----|---|
| O | Order, <u>AT&T Communications of the Southern States, Inc. v. BellSouth Telecommunications, Inc.</u> , No. 5:97-CV-405-BR (Eastern District of North Carolina, Western Division May 22, 1998) |
| P | Recommended Decision, Pennsylvania Public Utility Commission, <u>Petition of Bell Atlantic - Pennsylvania, Inc. For a Determination of Whether the Provision of Business Telecommunications Services is Competitive Under Chapter 30 of the Public Utility Code</u> , Docket No. P-00971307 (July 24, 1998) |
| | |

FEDERAL AND STATE COMMISSION ORDERS CITED

FCC ORDERS

| SHORT CITE | FULL CITE |
|---|--|
| Accounting Safeguards Order | Report and Order, <u>Accounting Safeguards Under the Telecommunications Act of 1996</u> , CC Docket No. 96-150, FCC 96-490 (rel. Dec. 24, 1996) |
| Ameritech Michigan Order | Memorandum Opinion and Order, <u>Application of Ameritech Michigan Pursuant to Section 271 to Provide In-Region, InterLATA Services in Michigan</u> , CC Docket No. 97-137, FCC 97-298 (rel. Aug. 19, 1997) |
| CPNI Order | Second Report And Order And Further Notice Of Proposed Rulemaking, <u>Implementation of the Telecommunications Act of 1996, Telecommunications Carriers' use of Customer Proprietary Network Information and Other Customer Information</u> , CC Docket No. 96-115, FCC 98-27 (rel. Feb. 26, 1998) |
| Enhanced Service Providers Order | Order, <u>In the Matter of Amendments of Part 69 of the Commission's Rules Relating to Enhanced Service Providers</u> , 3 FCC Rcd 2631 (1988) |
| Infrastructure Sharing Order | Report and Order, <u>Implementation of Infrastructure Sharing Provisions in the Telecommunications Act of 1996</u> , CC Docket No. 96-237, FCC 97-36 (rel. Feb. 7, 1997) |
| Local Competition Order | First Report and Order, <u>Implementation of the Local Competition Provision in the Telecommunications Act of 1996</u> , CC Docket No. 96-98, FCC 96-325 (rel. Aug. 8, 1996), <u>aff'd in part and vacated in part, Iowa Utils. Bd. v. FCC</u> , 120 F.3d 753 (8th Cir. 1997), <u>cert. granted sub nom. AT&T Corp. v. Iowa Utils. Bd.</u> , No. 97-826, et al., (Jan. 26, 1998) |
| Local Competition Second Report and Order | Second Report and Order and Memorandum Opinion and Order, <u>Implementation of the Local Competition Provisions of the Telecommunications Act of 1996</u> , CC Docket No. 96-98, FCC 96-333 (rel. Aug. 8, 1996) |
| Louisiana Order | Memorandum Opinion and Order, <u>Application by BellSouth Corp., et al. Pursuant to Section 271 to Provide In-Region, InterLATA Services in Louisiana</u> , CC Docket 97-231, FCC 98-17 (rel. Feb. 4, 1998) |
| Non-Accounting Safeguards NPRM | Notice of Proposed Rulemaking, <u>Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as amended</u> , CC Docket No. 96-149, FCC 96-308 (rel. July 18, 1996) |

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| Non-Accounting Safeguards Order | First Report and Order and Further Notice of Proposed Rulemaking, <u>Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as amended</u> , CC Docket No. 96-149, FCC 96-489 (rel. Dec. 24, 1996) |
| Performance Measurements NPRM | Notice of Proposed Rulemaking, <u>Performance Measurements and Reporting Requirements for Operations Support Systems, Interconnection, and Operator Services and Directory Assistance</u> , CC Docket No. 98-56 (rel. April 17, 1998) |
| Resale and Shared Use Order | Report and Order, <u>In the Matter of Regulatory Policies Concerning Resale and Shared Use of Common Carrier Services and Facilities</u> , 60 FCC 2d 261 (1976) |
| SBC Oklahoma Order | Memorandum Opinion and Order, <u>Application by SBC Communications Inc., Pursuant to Section 271 to Provide In-Region, InterLATA Services in Oklahoma</u> , CC Docket No. 97-121, FCC 97-228 (rel. June 26, 1997), <u>aff'd</u> , <u>SBC v. FCC</u> , 138 F.3d 410 (D.C. Cir. 1998) |
| Second Order on Reconsideration | Second Order on Reconsideration, <u>Implementation of the Local Competition Provisions in the Telecommunications Act of 1996</u> , CC Docket No. 96-98, FCC 96-476 (rel. Dec. 13, 1996) |
| South Carolina Order | Memorandum Opinion and Order, <u>Application of BellSouth Corp., et al. Pursuant to Section 271 to Provide In-Region, InterLATA Services in South Carolina</u> , CC Docket No. 97-208, FCC 97-418 (rel. Dec. 24, 1997), <u>appeal pending</u> , Case No. 98-1019 (D.C. Cir.) |
| Telephone Number Portability Order | First Report and Order and Further Notice of Proposed Rulemaking, <u>Telephone Number Portability</u> , 11 FCC Rcd. 8352 (1996) |
| Telephone Number Portability Reconsideration Order | First Memorandum Opinion and Order on Reconsideration, <u>In the Matter of Telephone Number Portability</u> , 12 FCC Rcd. 7236 (1997) |
| Texas Preemption Order | Memorandum Opinion and Order, <u>Petitions for Declaratory Ruling and/or Preemption of Certain Provisions of the Texas Public Utility Regulatory Act of 1995</u> , CCBPol No. 96-13, 96-14, FCC 97-346, 13 FCC Rcd. 3460 (rel. Oct. 1, 1997) |
| Third Order on Reconsideration | Third Report and Order on Reconsideration and Further Notice of Proposed Rulemaking, <u>Implementation of the Local Competition Provisions in the Telecommunications Act of 1996</u> , CC Docket No. 96-98, FCC 97-295 (rel. Aug. 18, 1997) |
| | |

STATE ORDERS

| SHORT CITE | FULL CITE |
|-----------------------------|--|
| California PUC Staff Report | Initial Staff Report, California Public Utilities Commission, Telecommunications Division, <u>Pacific Bell and Pacific Bell Communications Notice of Intent to File Section 271 Application For InterLATA Authority in California</u> , Case No. U 1001 C (July 10, 1998) (Attachment 40 to Falcone Aff., AT&T Exhibit E) |
| Colorado PUC Decision | Decision Regarding Commission Authority to Require Combination of Network Elements, <u>In re The Investigation and Suspension of Tariff Sheets filed By US West Communications, Inc. With advice Letter No 2617, Regarding Tariffs for Interconnection, Local Termination, Unbundling, and Resale of Services</u> , Colorado PUC Docket No. 96S-331T, Decision No. C98-267 (Feb. 18, 1998) (Attachment 42 to Falcone Aff., AT&T Exhibit E) |
| Connecticut DPUC Decision | <u>Investigation into Rebundling of Telephone Company Network Elements</u> , Connecticut Department of Public Utilities Commission, Docket No. 98-02-01 (July 8, 1998) (Attachment 35 to Falcone Aff., AT&T Exhibit E) |
| Final Recommendation | Final Recommendation, Chief ALJ, Louisiana PSC, <u>Review and consideration of BellSouth Telecommunications, Inc.'s TSLRIC and LRIC cost studies</u> , et al., Docket No. U-22022/U-22093 (Oct. 17, 1997) (App. C-3, Tab 292 to BellSouth Second Application for La.) |
| Florida PSC Decision | Florida Public Service Commission, <u>In re Motions of AT&T Communications et al. to Compel BellSouth Telecommunications, Inc., To Set Non-Recurring Charges For Combinations of Network Elements</u> , Docket No. 971140-T.P., Order No. PSC 98-08100-FOF-T.P. (June 12, 1998) (Attachment 29 to Falcone Aff., AT&T Exhibit E) |
| Idaho PSC Decision | Idaho Public Service Commission, <u>In the Matter of AT&T Communications of the Mountain States, Inc. Petition for Arbitration Pursuant to Section 252(b) of the Telecommunications Act of 1996 of the Rates, Terms, and Conditions of Interconnection with U S WEST</u> , Case No. USW-T-9615 (Dec. 1, 1997) (Attachment 34 to Falcone Aff., AT&T Exhibit E) |
| Iowa BPU Decision | Final Arbitration Decision on Remand, Iowa Department of Commerce Utilities Board, <u>In re AT&T Communications of the Midwest, Inc. and US West Communications, Inc.</u> , Docket No. AIA-96-1(ARB-96-1) (May 15, 1998) (Attachment 32 to Falcone Aff., AT&T Exhibit E) |

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|---|---|
| LPSC Pricing Order | Louisiana PSC, <u>Review and consideration of BellSouth Telecommunications, Inc.'s TSLRIC and LRIC cost studies</u> , et al., Docket No. U-22022/U-22093 (Oct. 22, 1997) (App. C-3, Tab 293 to BellSouth Second Application for La.) |
| Massachusetts DPU Decision | <u>Consolidated Petitions of New England Telephone and Telegraph, et al. Pursuant to Section 252(b) of the Telecommunications Act of 1996</u> , D.P.U./D.T.E. 96-73/74 et al., Order (Mass. D.P.U. March 13, 1998) (Attachment 44 to Falcone Aff., AT&T Exhibit E) |
| Michigan PSC Decision | Opinion and Order, Michigan Public Service Commission, <u>In the Matter of the Application and Complaint of MCIMetro Access Transmission Services against Ameritech Michigan Requesting Non-Discriminatory, Efficient, and Reasonable Loops Using GR303 Capability</u> , Case No. U-11583 (June 3, 1998) (Attachment 31 to Falcone Aff., AT&T Exhibit E) |
| Montana PSC Decision | Public Service Commission of the State of Montana, Dep't of Public Service Regulation, <u>In the Matter of The Petition of AT&T Communications of the Mountain States, Inc., Pursuant to 47 U.S.C. Section 252(b) for Arbitration of Rates, Terms and Conditions of Interconnection With U S WEST Communications, Inc.</u> , Docket No. D96.11.200, Order No. 5961d (Apr. 30, 1998) (Attachment 30 to Falcone Aff., AT&T Exhibit E) |
| New York PSC Decision | New York Public Service Commission, <u>Proceeding on Motion of the Commission to Examine Methods by which competitive Local Exchange Carriers Can Obtain and Combine Unbundled Network Elements</u> , Case No. 98-C-0690 (May 6, 1998) (Attachment 41 to Falcone Aff., AT&T Exhibit E) |
| Pennsylvania ALJ Business Market Decision | Recommended Decision, Pennsylvania Public Utility Commission, <u>Petition of Bell Atlantic - Pennsylvania For a Determination of Whether the Provision of Business Telecommunications Services is Competitive Under Chapter 30 of the Public Utility Code</u> , Docket No. P-00971307 (July 24, 1998) (Exhibit P to AT&T Comments) |
| Pennsylvania ALJ Access Reform Decision | Recommended Decision, Pennsylvania Public Utility Commission, <u>Generic Investigation of Intrastate Access Charge Reform</u> , Docket No. I-00960066 (July 2, 1998) |
| Texas PUC Decision | Commission Recommendation, Public Utility Commission of Texas, <u>Investigation of Southwestern Bell Telephone Company's Entry Into the Texas InterLATA Telecommunications Market</u> , PUC Project No. 16251 (adopted May 21, 1998) (Attachment 39 to Falcone Aff., AT&T Exhibit E) |

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| Utah PSC Decision | Order on Reconsideration, Utah Public Service Commission, <u>In the Matter of the Interconnection Contract Negotiations</u> , Docket Nos. 96-087-03 and 96-095-01 (June 9, 1998) (Attachment 33 to Falcone Aff., AT&T Exhibit E) |
| Washington UTC Decision | Order Partially Granting Reconsideration, Washington Utilities and Transportation Commission, <u>In the Matter of the Petition for Arbitration of an Interconnection Agreement Between AT&T Communications of the Pacific Northwest Inc.</u> , Docket No. UT-960307 (March 16, 1998) (Attachment 28 to Falcone Aff., AT&T Exhibit E) |
| | |

PRIOR SECTION 271 FILINGS

| SHORT CITE | FULL CITE |
|------------------|--|
| Br. (No. 97-231) | Brief in Support of Application By BellSouth For Provision of In-Region, InterLATA Services in Louisiana, <u>In the Matter of Application By BellSouth Corp., et al., For Provision of In-Region, InterLATA Services in Louisiana</u> , CC Docket No. 97-231 (filed Nov. 6, 1997) |
| DOJ Okla. Eval. | Evaluation of the U.S. Department of Justice, <u>In the Matter of Application of SBC Communications, Inc., et al., Pursuant to Section 271 of the Telecommunications Act of 1996 to Provide In-Region, InterLATA Services in the State of Oklahoma</u> , CC Docket No. 97-121 (filed May 16, 1997) |
| DOJ La. Eval. | Evaluation of the U.S. Department of Justice, <u>In the Matter of Application by BellSouth Corp., et al., for Provision of In-Region, InterLATA Services in Louisiana</u> , CC Docket No. 97-231 (filed Dec. 10, 1997) |
| DOJ SC Eval. | Evaluation of the U.S. Department of Justice, <u>In the Matter of Application by BellSouth Corp., et al., for Provision of In-Region, InterLATA Long Distance Services in South Carolina</u> , CC Docket No. 97-208 (filed Nov. 4, 1997) |
| | |

The microscopic level of local competition in Louisiana reflects BellSouth's persistent checklist noncompliance. More than 99 percent of this significant market, which includes the nation's 24th largest city, remains firmly in BellSouth's grip. This monopoly persists despite

vigorous efforts and sustained commitments by new entrants, punctuated most recently by AT&T's enormous investments in the facilities of Teleport Communications Group and TCI. As a result, even BellSouth has retreated from its prior baseless accusations that its potential competitors were "holding back" from competing (see Br. i, No. 97-231). Nevertheless, investments alone will not break BellSouth's bottleneck. Without nondiscriminatory access to BellSouth's network and full implementation of each of the fourteen checklist items, BellSouth will retain its local monopoly for the foreseeable future.

Three overarching obstacles continue to deter competitive entry throughout BellSouth's territory. First, competitors lack nondiscriminatory access to unbundled network elements. To compete statewide, particularly for residential and small business customers, CLECs need nondiscriminatory access to combinations of unbundled network elements at cost-based rates. This need is urgent now, and will remain vital for AT&T even after it completes its acquisitions of additional facilities-based resources. But BellSouth and other incumbents have refused to offer any method of access to unbundled network elements save the one (collocation) that most obviously forecloses competition.

BellSouth's attempt to impose collocation as the sole means of accessing unbundled network elements conflicts with the plain language of section 251(c)(3), with this Commission's Rule 51.321, and with the Eighth Circuit's decision. It is "requesting carriers," and not only the incumbent, that are permitted to obtain "any" technically feasible method of access to unbundled network elements. Moreover, the manual processing required with collocation makes it inherently an unreasonable and discriminatory method of combining unbundled network elements and will preclude their use as a means to bring widespread competition to residential and small-business subscribers. For this reason, the Commission should emphasize, as many

state commissions now have, that collocation requirements are incompatible with an incumbent's duties under section 251(c)(3), and should require BellSouth to implement requests for technically feasible alternatives to collocation for combining network elements.

Further, even if it were permissible to impose collocation, BellSouth has yet to provide it as a means of combining elements. In this Track A proceeding, BellSouth must prove that it is providing each checklist item pursuant to interconnection agreements. Yet BellSouth relies not on interconnection agreements but on a vaguely worded SGAT and non-binding and open-ended handbooks and affidavits. These are the same materials the Commission criticized as inadequate even for a Track B proceeding, and BellSouth's paper promises remain hopelessly superficial, open-ended, and inadequate.

BellSouth compounds the problem of discriminatory access to unbundled network elements because it is still unable to provision all of the features, functions, and capabilities of individual network elements. BellSouth cannot provide CLECs with the daily electronically generated reports on access usage needed to bill for exchange access services. BellSouth also refuses to provide CLECs with access to vertical features except in the combinations that BellSouth currently offers to its customers; imposes discriminatory intellectual property restrictions on the use of all unbundled network elements; has developed no means for electronic processing of many individual-UNE and combination-UNE orders; and has not provided CLECs with nondiscriminatory access to customized routing.

BellSouth's inflated prices further deter UNE-based entry. The excessive UNE-rates approved by the Louisiana Public Service Commission ("LPSC") are derived from cost-studies that were labeled "forward-looking" but that used actual, embedded costs rather than forward-looking costs. Due in part to unreasonable time constraints imposed by the LPSC and the

"closed" nature of the BellSouth cost studies, these flawed assumptions were never corrected, which is why the LPSC's ALJ recommended that additional proceedings be scheduled to complete the task of setting cost-based rates. The LPSC's unexplained decision to ignore the ALJ's recommendation was arbitrary and capricious, and consistent only with the LPSC's overall indifference to this Commission's orders and to Congress's policy of requiring a BOC to comply with the Act before it is permitted to provide in-region long distance service.

The second profound obstacle to meaningful, widespread competition in Louisiana and elsewhere in BellSouth's territory is BellSouth's failure to provide nondiscriminatory access to its operations support systems. BellSouth has fixed virtually none of the defects that this Commission cited in rejecting the last Louisiana application. For example, BellSouth's own data continue to demonstrate that BellSouth's systems are dependent upon manual intervention to process CLEC orders. Most notably, the percentage of EDI orders from new entrants that actually flow electronically through BellSouth's systems has dropped even lower than last time, when it already was the leading OSS defect that the Commission identified. Similarly, BellSouth still depends on manual intervention to notify CLECs of rejections, errors, and BellSouth-created problems that jeopardize BellSouth's ability to meet due dates -- each of which was extensively discussed and explicitly cited as a "deficiency" requiring denial of BellSouth's last two applications.

This Commission has repeatedly insisted that incumbents give CLECs access to the incumbent's OSS that is equivalent to what the incumbent enjoys. AT&T's painful experience in ramping up market-entry in California vividly underscores the importance of that bedrock requirement. Although Pacific Bell had publicly pronounced that its OSS could handle order volumes far in excess of what AT&T sent, the systems' dependence on manual processing

produced enormous backlogs that forced AT&T and other CLECs to withdraw from the market. No serious competitor can afford to risk its reputation with mass-market entry that is dependent on its competitor's manual processing. BellSouth's inability to deliver electronic processing for even the small volume of orders it now receives is decisive proof that its systems are not ready to support meaningful competition.

Third, BellSouth denies competitors access to a host of other checklist items that are crucial to the development of facilities-based competition. With resale still plagued by unlawful restrictions and viable only as a transition to UNE-based competition, and with UNE-based competition foreclosed, AT&T has concentrated its market-entry efforts on a facilities-based service called AT&T Digital Link ("ADL"). To obtain ADL, a customer must establish a high-capacity dedicated link from its PBX to an AT&T toll switch (4ESS). AT&T now offers such customers in Louisiana and elsewhere in BellSouth's territory the ability to place outbound local calls over this link, and is in the process of introducing the ability to place 800 and 888 calls ("8YY service") and to receive inbound local calls.

The success of this offer, however, is critically dependent on BellSouth's willingness and ability to provide numerous checklist items. BellSouth's failures to date have seriously delayed and undercut AT&T's entry. For example, a typical ADL customer will switch a handful of lines to AT&T and, if satisfied with the service, will ask to switch over more lines. BellSouth's systems, however, cannot port to AT&T the numbers involved in that second, or in any subsequent, order. Indeed, at the time of this application, BellSouth had been unable to provide AT&T with a workable way to submit such orders even by fax -- effectively choking off the growth of this service.

BellSouth's poor performance in other areas has further undermined AT&T's ability to market ADL. For example, BellSouth has discriminated in providing interconnection, by delaying needed interconnection trunks, arbitrarily shutting down trunks, and failing to provide proper call routing. BellSouth also has not provided AT&T with a means of ordering the complex directory listings that its large ADL customers frequently need for ported numbers. And BellSouth's problems with porting numbers are likely only to get worse given its inability to provide electronic order testing in advance of its cutover to permanent number portability.

Many of these difficulties also illustrate a deeper and ultimately more important problem. For some issues -- such as subsequent ADL orders or complex directory listings -- AT&T and BellSouth had developed work-arounds that, while still discriminatory, had at least given AT&T access to those functions. When BellSouth unilaterally deployed an "enhanced" version of its ordering interface (EDI) this spring, it eliminated those work-arounds but provided nothing to replace them, leaving AT&T worse off than it was before. By taking back what it had previously given, BellSouth underscored the uncertainty that new entrants uniquely face when their success hinges upon BellSouth's cooperation. By refusing to adopt and adhere to a collaborative and comprehensive change control process, BellSouth has ensured that it retains the ability to stop its competitors' progress cold whenever it wishes to do so.

In short, BellSouth has not addressed the Commission's prior concerns, it has not provided numerous other checklist items that competitors have requested, and it has not relinquished its monopoly position in Louisiana or elsewhere. If BellSouth truly believed that the premise for a successive application was to have "addressed" the Commission's prior "concerns" (Br. i), then it should never have filed this application.

That is why the unstated premise of BellSouth's application also is significant. BellSouth's implicit hope is that the Commission, perhaps moved by BellSouth's patent lack of meaningful progress, will retreat from the findings and standards it has previously established, lower the compliance bar, and (in the course of drawing yet another "roadmap") make promises about future findings in advance of receiving concrete evidence of BellSouth's performance and convincing proof that local markets are irreversibly open.

The Commission should not -- indeed, lawfully cannot -- rise to the bait. The standards that the Commission has established for providing nondiscriminatory access to unbundled network elements and operations support systems, and the requirement of full implementation of each checklist item, are too vital to the future of local competition to warrant compromise. They must be enforced if the promise of the Telecommunications Act is to be fulfilled.

BellSouth's repeated and pervasive failure to remedy the defects that the Commission has already found give BellSouth the least standing of any BOC to clamor for more guidance. When such demands come from a party that has not followed the guidance already given, it suggests that the true goal is actually revised standards, not additional ones. By pretending not to understand or flatly refusing to comply with many of its statutory and contractual obligations, BellSouth has forced AT&T and others to resort to administrative complaints and litigation that are devastating to new entrants who depend on BellSouth's timely and reliable performance to execute their business plans. To appease BellSouth now by lowering standards would simply encourage it to continue to treat section 271 relief as a war of attrition.

In short, to dilute the Commission's standards would reward BellSouth for its extraordinary success in defying and delaying compliance with its legal obligations under the Act, and for securing the LPSC's blessing of that misconduct. Far from hastening the onset of

local competition, relaxing standards now would ensure that local competition would never materialize in Louisiana, for BellSouth would have no incentive to provide new entrants with the nondiscriminatory access to operations support systems and other unbundled network elements and checklist items that they cannot get today. BellSouth would thus quickly become and long remain the only significant carrier able to offer the bundles of local and long-distance service that many customers prefer.

That is the very outcome Congress intended to prevent when it passed the Act. Congress recognized what common sense confirms: that the potential consumer welfare gains of adding one more competitor to an already-highly competitive long distance market are dwarfed by the potential gains of adding new competitors to the long-monopolized local markets. BellSouth's determined refusal to accept its market-opening obligations confirms that Congress's goal will be achieved in Louisiana only if full compliance with those obligations precedes long distance authorization.

Part I of this brief sets forth in more detail the ways in which BellSouth has failed to provide each of the items of the competitive checklist. In particular, this section sets forth BellSouth's failure:

- to provide nondiscriminatory access to combinations of network elements;

- to provide nondiscriminatory access to its OSS;

- to provide nondiscriminatory access to other unbundled network elements, and to price them at cost;

- to provide the interconnection, number portability, and directory listings needed for facilities-based services such as ADL;

- to provide other checklist items (including directory assistance, reciprocal compensation, and rights-of-way) as required by law; and

to make its contract service arrangements available for resale without unlawful restrictions.

Each of these failures provides independent grounds for denying BellSouth's application.

Part II explains why BellSouth fails to meet section 271(c)(1)(A)'s threshold requirement of proving the existence of one or more predominantly facilities-based providers of local exchange service to residential and business subscribers. BellSouth's evidence unmistakably shows that -- on any conceivable reading of the statute -- no provider meets the statutory standard today. That is not surprising, because BellSouth's pervasive checklist noncompliance obstructs the development of facilities-based competition. BellSouth's attempt to rely on a small reseller (Louisiana Unwired) and on PCS providers -- carriers that need less cooperation from BellSouth and do not provide a competitive alternative for most Louisianans to BellSouth's wireline service -- underscores the importance of enforcing the Track A requirements.

Part III shows that BellSouth operates today in violation of the nondiscrimination and separation requirements of section 272, and has deliberately refused to produce information concerning affiliate transactions that this Commission has held is essential to any assessment of future compliance with section 272. Finally, Part IV explains why it would be contrary to the public interest to grant BellSouth's application before facilities-based competition is irreversibly established in its local markets, and why this alone warrants rejection of BellSouth's application.¹

¹ For all of the above reasons, the Commission also should reject BellSouth's separate application for authorization to originate international services. See Br. 3 n.1.

I. BELLSOUTH IS NOT PROVIDING EACH CHECKLIST ITEM

Section 271 requires proof that the BOC "is providing" and has "fully implemented" "each" item of the competitive checklist. § 271(c)(2)(A) & (B), (d)(3)(A)(i). In the Ameritech Michigan Order (addressing, as here, a Track A application), this Commission held that to be "'providing' a checklist item, a BOC must first show "a concrete and specific legal obligation to furnish the item upon request pursuant to state-approved interconnection agreements that set forth prices and other terms and conditions for each checklist item." Ameritech Michigan Order ¶ 110 (emphasis added). Second, the BOC "must demonstrate that it is presently ready to furnish each checklist item in the quantities that competitors may reasonably demand and at an acceptable level of quality." Id.² To have "fully implemented" (§ 271(d)(3)) the checklist's nondiscrimination requirements, such a showing must be made with respect to each CLEC that is seeking to obtain a particular item (whether or not the BOC chooses to rely on that carrier's agreement); that showing also must precede approval of interLATA authority, for afterwards, any incentive for the BOC to provide checklist items will evaporate.

For checklist item after checklist item, BellSouth has not provided the requisite proof. As in the past, BellSouth relies not on interconnection agreements but on mere promises (in SGATs, manuals, and affidavits) to paper over the deficiencies in its application. Each of these defects, set forth below and in further detail in accompanying affidavits, is an independent

² It remains AT&T's position, despite the Commission's rejection of it in the Ameritech Michigan Order, that an application pursuant to Track A must contain proof that the applicant is actually furnishing each checklist item to at least one requesting carrier. In AT&T's view, the requirement of actually furnishing checklist items provides an important distinction between Track A and Track B. Thus, for example, the fact that BellSouth is not actually furnishing combinations of unbundled loops and switching, despite the expressed interest of competitors in obtaining them on reasonable, technically feasible terms and conditions, provides an additional and independent basis for rejecting BellSouth's application.

reason to reject BellSouth's application. Cumulatively, they explain the lack of meaningful local competition in Louisiana.

A. BellSouth Is Not Providing Combinations Of The Loop And Switching Elements

Under the plain terms of section 251(c)(3), BellSouth must provide "nondiscriminatory access" to its network elements on an unbundled basis, "at any technically feasible point," and "in a manner that allows requesting carriers to combine" them free of any unreasonable restrictions. § 251(c)(3). Under the Eighth Circuit's decision in Iowa Utils. Bd. v. FCC, 120 F.3d 753 (8th Cir. 1997), cert. granted sub nom. AT&T Corp. v. Iowa Utils. Bd., No. 97-826, et al., (Jan. 26, 1998) ("Iowa Utils. Bd."), CLECs seeking to use combinations of unbundled network elements must "combine the unbundled elements themselves." 120 F.3d at 813. Nothing in the Eighth Circuit's order, however, relieves incumbent LECs of their statutory duty to provide CLECs with access to their networks "at any technically feasible point" in order to do the requisite combining. § 251(c)(3).

For three independent reasons, set forth in detail below, BellSouth has not met this duty. First, this application, like BellSouth's prior ones, assumes that the Act entitles BellSouth to limit CLECs to a single method of gaining access to its network to combine elements. This assumption conflicts, however, with the plain language of section 251(c)(3), with Rule 51.321 (which the Eighth Circuit upheld), and with the Eighth Circuit's holding that carriers need not deploy their own facilities to use combinations of network elements. Second, the collocation method that BellSouth offers is an unreasonable and discriminatory form of access to unbundled network elements that will preclude any meaningful, widespread use of UNE-combinations to serve residential and small business customers. Accordingly, the Commission should endorse the approach that many state commissions have taken in refusing to accept unilateral BOC

imposition of collocation and require BellSouth to pursue all requests for technically feasible alternatives. Third, even assuming a collocation requirement were permissible, BellSouth is not providing collocation for recombining elements and has not made a concrete, binding, and detailed commitment to provide it. This was one of the reasons why the Commission rejected BellSouth's South Carolina application, and it is equally applicable here.

1. CLECs Have The Primary Right To Decide How To Gain Access To Unbundled Network Elements

BellSouth asserts that it can satisfy its statutory obligation under sections 251(c)(3) and 271 merely by providing CLECs with "at least one option for combining UNEs on non-discriminatory terms." Br. 40. That is incorrect. Nothing in the Act limits the duties of incumbent LECs to providing "one option" for any kind of network access or interconnection. The express language of the Act forecloses any such limitation on the incumbent LECs' duties.

Section 251(c)(3) requires incumbent LECs to provide "requesting carriers" with nondiscriminatory access "at any technically feasible point." § 251(c)(3). Notably, the statute does not refer to access at "at least one" technically feasible point, but to access at "any" point. Moreover, section 251(c)(3) refers to "requesting carriers" (not "dictating incumbents"), which is further textual evidence that the access process is driven by what competing carriers "request," and not what incumbents unilaterally decide to make available. In short, what was true of the RBOCs' approach to section 271(c)(1)(B) is equally true here: "[I]t is flatly inconceivable . . . that a competent draftsman would have chosen the language of [section 251(c)(3)] if he or she had consciously intended [BellSouth's] interpretation." SBC v. FCC, 138 F.3d 410, 420 (D.C. Cir. 1998).

The plain statutory command of section 251(c)(3) comports both with engineering reality and the achievement of the statute's basic goals. There are many technically feasible ways of

gaining access to unbundled network elements. See Falcone Aff. ¶¶ 151-214. If UNE-based competition is ever to flourish, CLECs must be permitted to select the technically feasible methods for accessing unbundled network elements that best advance their business objectives. This Commission has given this principle full effect in Rule 51.321, which requires incumbent LECs to provide "any technically feasible method of obtaining interconnection or access to unbundled network elements at a particular point upon request" and unequivocally states that such methods include but "are not limited to" physical and virtual collocation. 47 C.F.R. § 51.321(a), (b); see Local Competition Order ¶¶ 549-54; South Carolina Order ¶¶ 184, 207.

BellSouth has offered no legal theory to justify the extraordinary legal restriction it seeks to impose. Its position rests solely on its misreading of an issue summary prepared by Commission staff members last spring. See Br. 40³. The portion to which BellSouth selectively refers states only that, "at a minimum," a BOC seeking interLATA authorization "must demonstrate that at least one of the methods it offers satisfies the statutory nondiscrimination requirement." Overview Of Common Carrier Bureau Staff Summaries at ii-5, attached to Letter of William E. Kennard To Sen. John McCain and Sen. Sam Brownback, March 20, 1998. The staff summary does not state that collocation is reasonable and nondiscriminatory, that it could be shown to be so, or even that such a "minimum" showing would suffice to fully implement the checklist, particularly when the BOC was resisting requests for technically feasible access to unbundled network elements. To the contrary, the summary reaffirms the vitality of both the clear statement in Rule 51.321 that requesting carriers "are not

³ Notably, BellSouth has abandoned both its frivolous takings argument and its untenable statutory argument based on section 251(c)(6), each of which it has elsewhere advanced in support of its "collocation only" theory. It cannot introduce these arguments for the first time in reply. See, e.g., Ameritech Michigan Order ¶ 57.